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NORTH SLOPE BOROUGH POPULATION

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You asked us to provide the current population in the North Slope Borough. You also wished to know the legal authority for the population determinations made by the Department of Community and Economic Development for revenue sharing and the property tax cap. We address your questions separately below.

POPULATION OF THE NORTH SLOPE BOROUGH

The North Slope Borough is Alaska's largest borough, encompassing over 15% of the total land area of the state.¹ Though large in area, the borough is sparsely populated. Three population figures exist for the North Slope Borough: the U.S. Census count of borough residents, the population figure used to establish a cap on revenue which may be raised by the borough's property tax levy, and the population figure used to determine the borough's entitlement to state revenue sharing. The population counts used for the tax cap determination and revenue sharing are the result of supplementing the census count with calculations of the number of workers employed in the Prudhoe Bay oil field.

¹ The Department of Community and Economic Development provides population, tax, and budget information about municipalities on the Internet at http://www.dced.state.ak.us/mra/CF_BLOCK.htm.

The determinations of the tax cap population and revenue sharing population for the North Slope Borough are a combined effort of the Department of Community and Economic Development (DCED) and the Department of Labor and Workforce Development (DLWD). The DLWD is responsible for determining the average annual workforce in the Prudhoe Bay oil fields; the DCED uses that average in its calculation of the population figures for purposes of the property tax cap and revenue sharing.

Neal Fried, a labor economist for DLWD, determines the average number of employees in the oil field workforce using employment tax returns filed by oil field employers. If an employer does not report the number of employees at Prudhoe Bay, DLWD must estimate the number using information from other sources. During the year 2000, DLWD has calculated that the monthly employment in the Prudhoe Bay census area to range between 5,534 and 6,369 workers, and the average monthly employment for the year to have been 5,778.²

Laura Walters, a research analyst for DCED, determines the tax cap population for the North Slope Borough by adding the average monthly employment for the year in the Prudhoe Bay census area to the resident population.³ For 2001, Ms. Walters calculated the tax cap population to be 13,163. The Alaska Supreme Court, in the case of *Matanuska-Susitna Borough v. Hammond*, concluded that this method of including the entire average oil field work force in the tax cap population was within the discretion of the department.⁴

The DCED's revenue sharing population determination is more complex. While the population for tax cap purposes includes the annual average of all employment at Prudhoe Bay, the revenue sharing population includes only a little more than one-third of the oil field employment. According to Laura Walters, who is also responsible for making this determination, the department adds 35.4% of the average monthly employment for the year to the resident population to reach the revenue sharing population. The percentage of oil field employment to be included was established in an agreement reached between the North Slope Borough and the former Department of Community and Regional Affairs (DCRA). The DCRA and its successor, DCED, have used that percentage for computing the borough's revenue sharing population since the early

² According to Neal Fried, Alaska law requires employers to report the number of full and part-time workers but does not require employers to report employment by location, though some employers volunteer the information. Two Prudhoe Bay employers, ARCO and Phillips Petroleum, filed employment tax returns on a statewide basis during 2000 and did not designate the number of their employees working on the North Slope. Before ARCO's merger into British Petroleum, ARCO employees were located in Anchorage as well as Prudhoe Bay. Phillips' employees were located primarily in Kenai before Phillips' entry into Prudhoe Bay oil production. To allocate employment to the North Slope Borough, DLWD attributed 60% of ARCO's employees and 42% of Phillips' employees to the Prudhoe Bay oil field work force. The 60% factor applied to ARCO employees has been in effect since 1996. Mr. Fried may be contacted at (907) 269-4861.

³ Ms. Walters may be contacted at (907) 269-4521.

⁴ In 1986, the Supreme Court issued its decision in *Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166 (Alaska 1986). With regard to counting oil field workers and including them in the population of the borough for tax cap purposes, the court stated that, "[W]e see nothing in the purpose of the tax-limitation statute that would prohibit the CRA from determining population in a way that accounts for the average number of people present in the North Slope Borough on any given day. 726 P.2d at 178. Justice Moore summarized the court's conclusion as follows:

[W]e conclude that it was rational to include the average remote site workforce in the North Slope's tax-limitation population, that it was rational to use employment data to estimate the average size of that workforce, and that the data used was reasonably reliable. *Matanuska-Susitna Borough*, 726 P.2d at 180.

In 1989, the Department of Community and Regional Affairs adopted 3 AAC 131.020. This regulation authorizes supplementing the resident population with the annual average number of employment positions in remote sites when determining the number of residents for tax cap purposes.

1980s.⁵ For 2000, DCED added 2,045 (35.4% of 5,778) to the resident population for determining the borough's population of 9,430 for state revenue sharing.⁶

Ms. Walters provided us with the population numbers determined for the years 1997 through 2001. Table 1 contains the resident population, the average number of oil field workers (as determined by DLWD), the population used to calculate the property tax cap (as determined by DCED), and the population for revenue sharing (as determined by DCED).

Table 1: North Slope Borough Populations, 1997—2001					
	1997^(a)	1998	1999^(b)	2000	2001
Resident Population ^(c)	7,263	7,403	7,555	7,641	7,385
Average Oil Field Workforce	5,502	5,609	5,867	4,843	5,778
Population for Tax Limitation Formula ^(d)	12,765	13,012	13,422	12,484	13,163
Population for State Revenue Sharing Formula ^(e)	9,189	9,389	9,632	9,355	9,430

Notes: ^(a) The borough appealed the 1997 population figures and asked DCED to use the last three quarters of the prior year and the first quarter of the current year (rather than the prior calendar year) to determine the average oil field workforce.
^(b) The North Slope Borough appealed the 1999 calculations, and DCED adjusted the population based on a census conducted by the borough.
^(c) The Resident Population is determined using U.S. Census criteria.
^(d) The population for the tax limitation formula is the sum of the resident population and the average oil field workforce.
^(e) The population for revenue sharing is the sum of the resident population plus 35.4% of average oil field workforce.
Source: Laura Walters, Research Analyst, DCED, (907)269-4521.

AUTHORITY FOR DCED'S POPULATION DETERMINATIONS

The Department of Community and Economic Development has the responsibility for determining the population of a municipality for the purposes of revenue sharing and setting a limit on property taxes. As shown in Table 1, the populations DCED calculates for those two purposes is greater than the U.S. Census population. We previously discussed the procedures used by DCED to adjust the population counts; in this section, we present the authority for DCED to make those adjustments.

State revenue sharing, formally entitled "Municipal Tax Resource Equalization," consists of an equalization entitlement based on the population of a municipality, the municipality's ability to

⁵ Although the employees we contacted in DCED have been unable to locate the agreement between the North Slope Borough and the Department of Community and Regional Affairs, they believe that the parties reached the agreement in the early 1980s.

⁶ The Alaska Supreme Court has not reviewed the use of the 35.4% factor for determining the revenue sharing population. However, in *Matanuska-Susitna Borough v. Hammond*, the Court approved the inclusion of people who spend 51% or more of their time in the North Slope Borough in the population for purposes of revenue sharing. *Matanuska-Susitna Borough*, 726 P.2d at 177. Without knowing the basis for the 35.4% factor, we do not know whether that factor represents the number of oil field workers who spend 51% or more of each year in the North Slope Borough.

generate revenue, and local tax burden.⁷ The legislature delegated the responsibility to determine the population used in the formula to DCED. The delegation of authority is in AS 29.60.020, which reads as follows:

For purposes of AS 29.60.010 - 29.60.080, the population of a taxing unit shall be determined annually by the latest figures of the United States Bureau of the Census or other population data that in the judgment of the department is reliable.

In other words, DCED may use population from the latest U.S. Census, but has the discretion to use other population data. The department's regulation, 3 AAC 130.042, defines the alternatives for calculating the population. Subsection (b) of that section lists the alternatives as follows:

(b) The determination under (a) of this section will be based upon the following census or estimate that indicates the most recent population of the municipality:

- (1) a census of the U.S. Bureau of the Census;
- (2) a head count census conducted by the municipality in accordance with 3 AAC 130.043(c);
- (3) a housing unit method population estimate conducted by the municipality in accordance with 3 AAC 130.043(d);
- (4) an estimate by the Department of Labor and Workforce Development.

The actual method used by DCED to determine the revenue sharing population—adding 35.4% of the average oil field workforce to the census population—is not included in the four alternatives in subsection (b). The 35.4% factor seems to be the result of an agreement reached in the early 1980s between DCED's predecessor, the Department of Community and Regional Affairs (DCRA), and the North Slope Borough.⁸ DCRA and DCED have used the 35.4% factor, without adjustment, for approximately 20 years.

The DCED also is required to determine the population of a municipality for use in two different tax cap statutes—one applicable to all municipalities and one limiting the municipal property tax on oil and gas property.⁹

Pursuant to AS 29.45.090(d), DCED has the responsibility for determining the population for tax cap purposes for municipalities without oil and gas property. That subsection reads as follows:

For the purpose of [the tax limitation formulas in] this section, population shall be determined by the commissioner based on the latest statistics of the United States Bureau of the Census or on other reliable population data.

⁷ The Municipal Tax Resource Equalization statutes are located in AS 29.60.010 – 29.60.080. The formula for the entitlement is in AS 29.60.010(b).

⁸ As noted above, employees of DCED are unable to locate a copy of the agreement that is the basis for using the 35.4% factor.

⁹ The limits on the municipal taxation of oil and gas production and pipeline property are in AS 29.45.080. The general limits on municipal property taxation are in AS 29.45.080.

The DCED has not adopted regulations specifically targeted to implement this subsection.

The legislature requires DCED to determine the population for purposes of the tax cap formulas applicable to oil and gas property in AS 29.45.080(e). That subsection reads as follows:

(e) For purposes of this section, population shall be determined by the commissioner based on the latest statistics of the United States Bureau of the Census or on other reliable population data, and the commissioner shall advise each municipality of its population by January 15 of each year.

Two of DCED's regulations describe the process for determining the population to be used in the tax cap formulas in AS 29.45.080. The first regulation, 3 AAC 131.010, requires the commissioner of DCED to advise each municipality of its population for purposes of the tax caps by January 15 of each year. That regulation reads as follows:

By January 15 of each year the commissioner will advise each municipality with the power to levy a property tax of the population of the municipality determined by the commissioner for the purpose of calculating the limitation on property tax revenues under AS 29.45.080. Except as provided in 3 AAC 131.020, the population of a municipality for the purposes of the limitation on its oil and gas production property tax revenue will be the population determined and certified by the commissioner under 3 AAC 130.042.

Under this regulation, the population for tax cap purposes is the same as that determined for revenue sharing under 3 AAC 130.042, with one exception applicable to a single municipality—the North Slope Borough. The borough is unique in that it is the only municipality with remote site workers subject to the tax caps in AS 29.45.080.¹⁰ Under 3 AAC 131.020, if the North Slope Borough wants DCED to use the alternative method for determining its tax cap population, it must file a written request by November 1. The process of requesting the procedure and the method for determining the population are set forth in the regulation as follows:

(a) A qualified municipality may request that the commissioner determine its population under the procedure set out in this section instead of determining its population under 3 AAC 130.042. The request must be made in writing to the department by November 1. The department will send the municipal population determination to the municipality by December 1. The municipality may appeal the determination to the commissioner. The appeal must be in writing and must be mailed to the commissioner within 30 days after receipt of the notice of determination. The appeal must include the grounds for the appeal and any relevant evidence. The commissioner will review the appeal and notify the municipality of the decision on the appeal within 10 days after receipt of the appeal.

(b) The population of a municipality requesting a population determination under this section is the sum of the population, as determined under 3 AAC 130.042, of the municipality in locations other than remote work sites and the annual average number of employment positions at the remote work sites which, if

¹⁰ Valdez uses one of the tax cap formulas in AS 29.45.080 but does not have remote site workers. We include Attachment A, the method used by the North Slope Borough to determine its tax cap under AS 29.45.080. The attachment is from DCED, *Alaska Taxable 2001* (Juneau, January 2001), p. 25. *Alaska Taxable*, published annually, is available on the Internet at <http://www.dced.state.ak.us/cbd/osa/assessor.htm>.

occupied by one person, would qualify that person as a "permanent resident" under the definition at 3 AAC 130.150(12). The annual average number of employment positions shall be determined by using the most current available, relevant Department of Labor and Workforce Development statistics.

A "permanent resident," referenced in 3 AAC 131.020, is defined as "... a person whose primary place of residence is within the corporate limits of an applicant that is a municipality[.]"¹¹ Under the authority of this regulation, DCED determines the population of the North Slope Borough for purposes of the tax cap by adding the average number of workers on the North Slope oil fields to the resident population.¹² The results are set forth in Table 1, above.

As you may know, the population used for the tax cap computation has a greater value per person to the borough than does the population used for revenue sharing. According to the FY00 annual report of the community financial assistance program, the North Slope Borough received \$177,365 under the state revenue sharing program, the equivalent of less than \$19 per person.¹³ By contrast, each person included in the tax cap population allowed the borough to receive an additional \$4,410 per person at the borough's tax rate of 28.4 mills.¹⁴

I hope you find this information useful. Please do not hesitate to contact us if you have questions or need additional information.

¹¹ 3 AAC 130.150(12). The language, "an applicant that is a municipality," means a municipality that has applied for participation in the municipal tax resource equalization program in AS 29.60.010.

¹² We noted above that the DLWD uses employment tax returns as the basis for determining the average annual employment in the North Slope oil fields. Employers are required to report on their quarterly contribution report *the number of full and part-time workers who worked or who received pay for the payroll period*. See the instructions for the quarterly report on the Internet at http://www.labor.state.ak.us/estax/forms/1004-2a_Instructions.pdf, the quarterly report form is also available on the Internet at http://www.labor.state.ak.us/estax/forms/1004_p3_02rev1201.pdf. In other words, the quarterly reports state the number of *workers*, not the *number of employment positions*, the number critical to the population determination under 3 AAC 131.020(b). To the extent that DLWD counts the number of workers, rather than the number of "employment positions," DLWD overstates its count, and the population for tax cap purposes is too high.

For example, if two workers occupied the same employment position during a month, because each works two weeks then has two weeks off when the other worker fills the position, the employer would report both workers on the same quarterly return and in the monthly count on that report. However, the two workers occupy only one employment position. In *Matanuska-Susitna Borough v. Hammond*, the court approved determining the population in a way "that accounts for the average number of people present in the North Slope Borough on any given day." 726 P.2d at 178. Because one of the workers is away while the other is working on the North Slope, on any given day only one of those two workers would be in the borough. This situation is contemplated in the words of 3 AAC 131.020(b), which states the count should be based on "the annual average number of *employment positions* at the remote work sites which, if occupied by one person, would qualify that person as a 'permanent resident.'"

¹³ *Community Financial Assistance, FY00 Annual Report* (Juneau, Alaska, DCED, undated). Revenue sharing is not made on a per capita basis; population is only one factor in the calculation. We present the per capita calculation only for comparison purposes against the per capita benefit derived from the tax cap formula.

¹⁴ The tax cap is determined by multiplying the average per capita assessed value in the state by 2.25 and then multiplying that product by the tax cap population. Multiplying the average per capita assessed value, \$79,031, by 2.25 results in an assessed value limit of \$177,820 per person. According to the pertinent figures in *Alaska Taxable*, the borough applied an operating budget rate of 24.8 mills for its operating budget against the tax cap amount. See *Alaska Taxable 2000*, p. 25, included as Attachment A to this report. The application of a tax levy of 24.8 mills to \$177,820 of assessed value produces \$4,410 per person for operating revenue.

Attachment A

Office of the State Assessor, *Alaska Taxable 2000*
(Juneau, Alaska, DCED, January 2001), p. 25.
(<http://www.dced.state.ak.us/mra/osa/pub/00Taxable.pdf>)

North Slope Borough

EXPLANATION OF MILLAGE RATES:

AS 29.45.090(a) restricts the millage rate for the municipal operating budget to a maximum of 3% or 30 mills. (There is no limit on taxes to pay bonds.)

The 30 mill limit on operating revenues is levied against an assessed value no to exceed that produced by the following formula:

Average Per Capita Full Value X 225% X municipal population, or, for FY 01:

$$79,031 \times 2.25 \times 13,422 = \$ 2,386,696,685 \quad \begin{array}{l} \text{1} \\ \text{(Assessed Value Limit for} \\ \text{operating budget)} \end{array}$$

$$\$ 2,386,696,685 \times 30 \text{ mills} = \$ 71,600,900 \quad \begin{array}{l} \text{(FY 01 statutory limit for} \\ \text{operating budget)} \end{array}$$

FY 01 projected operating budget: \$59,197,210

$$\frac{\$59,197,210}{\$2,386,696,685} = 24.80 \text{ mills (operating budget rate)}$$

DEVELOPMENT OF ACTUAL OVERALL RATE

FY 01 projected budget for debt service (payment of bonds): \$141,928,000

Actual assessed value: \$10,821,684,071

$$\frac{\$141,928,000}{\$10,821,684,071} = 13.12 \text{ mills (levy to satisfy debt service)}$$

$$\frac{\$59,197,210}{\$10,821,684,071} = 5.47 \text{ mills (levy to satisfy operating budget)}$$

$$13.12 + 5.47 = 18.58^{\dagger} \text{ mills (actual overall rate)}$$

[†] Note: The difference between this mill rate and the actual rate use is due to estimations of the assessed values at the time of budget preparation by the borough. The borough also used the wrong population when initial calculations were made.

1/Note: for FY 02, this calculation will be:

$$\$81,548 \times 2.25 \times 12,484 = \$2,290,601,772$$

Note: The population used here is different from the population used in other areas of this publication due to the fact that the North Slope Borough is allowed to use a larger portion of the workforce in Prudhoe Bay to count in the tax cap formula. The revenue sharing calculation uses a smaller population count.